

33. (New) The orally ingestible product of Claim 9, wherein the material is a food
D2 containing powdered skim milk.

DISCUSSION OF THE AMENDMENT

Claims 9 and 13 have each been amended by replacing the term "orally ingestible product" with "--material--", for purposes of consistency, since Claim 9, for example, claims an orally ingestible product comprising a material and an agent for masking.

New Claims 17-33 have been added, each drawn to a material recited in Claim 9.

No new matter is believed to have been added by the above amendment. Claims 9, 13 and 17-33 are now pending in the application.

REMARKS

The rejections of Claims 9 and 13 under 35 U.S.C. § 103(a) as unpatentable over WO98/23166 (Gudas et al), GB1299135 (Cumberland Packing), EP 0582396 (Catania et al), and English language abstract of JP 61-120690 (Yusuke), are respectfully traversed.

As recited in Claim 9, the invention is an orally ingestible product lacking a bitter flavor comprising a material having at least one of an odor and a flavor other than a bitter flavor, and an agent for masking said at least one of an odor and a flavor other than a bitter flavor comprising a nontoxic salt of gluconic acid, wherein the flavor is selected from the group consisting of astringency, pungency, sourness and flavor of powdered milk, and wherein the odor is selected from the group consisting of soybean smell, vegetable smell, smell of garlic, smell of old rice, smell of konjak jelly, smell of vitamin, smell of retort-pouched product, smell of non-fish animal meat and smell of powdered milk, and wherein the material is selected from the group consisting of grated horseradish, Kimchi, grated Japanese

radish, vinegar, pickled Ume, lemon juice, soya milk, foods containing soybean protein, vegetable juice, tomato juice, grated garlic, old rice, konjak jelly, foods containing vitamin B group, retort-pouched foods, mutton and foods containing powdered skim milk.

As recited in Claim 13, the invention is also a method for masking at least one of an odor and a flavor other than a bitter flavor, of a material lacking a bitter flavor and having said at least one of an odor and a flavor other than a bitter flavor, in an orally ingestible product, comprising adding a nontoxic salt of gluconic acid to said product, wherein the flavor is selected from the group consisting of astringency, pungency, sourness and flavor of powdered milk, and wherein the odor is selected from the group consisting of soybean smell, vegetable smell, smell of garlic, smell of old rice, smell of konjak jelly, smell of vitamin, smell of retort-pouched product, smell of non-fish animal meat and smell of powdered milk, and wherein the material is selected from the group consisting of grated horseradish, Kimchi, grated Japanese radish, vinegar, pickled Ume, lemon juice, soya milk, foods containing soybean protein, vegetable juice, tomato juice, grated garlic, old rice, konjak jelly, foods containing vitamin B group, retort-pouched foods, mutton and foods containing powdered skim milk.

Gudas et al, Cumberland Packing, and Catania et al are each drawn to inhibiting or reducing bitterness, which is excluded from the claims. Yusuke is drawn to deodorizing water, although particular odors are not disclosed. Nevertheless, water is not an ingestible product within the terms of the claims.

In the Office Action, the Examiner, in effect, ignores the claim limitations. None of the applied prior art discloses or suggests any of the recited odors, flavors, or materials. The fact that sodium gluconate has been used for inhibiting or reducing bitterness in particular foods, or for deodorizing water, is irrelevant to the presently-claimed invention.

For all the above reasons, it is respectfully requested that these rejections be withdrawn.

The rejection of Claims 9 and 13 under 35 U.S.C. § 112, first paragraph, as failing to satisfy the description requirement therein, in the recital of “a material lacking a bitter flavor,” is respectfully traversed. The exclusion of a bitter flavor is supported by the disclosure of bitterness, as well as other flavors, at, for example, page 5, line 14 of the specification. Exclusion of an embodiment described in the specification is prescribed by, for example, *In re Johnson*, 558 F.2d 1008, 194 USPQ 187 (CCPA 1977) (**copy enclosed**) (holding that a claim to a genus with a recital of a negative proviso that did not appear in the specification complied with the *description* requirement.)

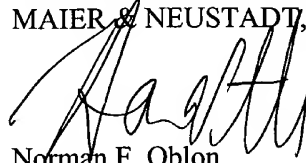
While the Examiner couches the statement of the rejection in terms of failing to satisfy the description requirement, she states that “Applicant does not clearly teach what is encompassed by ‘a material lacking a bitter flavor’.” The quoted statement appears to be raising an enablement or indefiniteness issue. Does the Examiner, with many years examining in the food art, seriously believe that one skilled in the art would not be able to ascertain the metes and bounds of “a material lacking a bitter flavor?” Applicants submit that the description, enablement and definiteness requirements are all satisfied.

For all the above reasons, it is respectfully requested that this rejection be withdrawn.

All of the presently-pending claims in this application are now believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Respectfully submitted,

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IN THE CLAIMS

--9. (Twice amended) An orally ingestible product lacking a bitter flavor comprising a material having at least one of an odor and a flavor other than a bitter flavor, and an agent for masking said at least one of an odor and a flavor other than a bitter flavor comprising a nontoxic salt of gluconic acid, wherein the flavor is selected from the group consisting of astringency, pungency, sourness and flavor of powdered milk, and wherein the odor is selected from the group consisting of soybean smell, vegetable smell, smell of garlic, smell of old rice, smell of konjak jelly, smell of vitamin, smell of retort-pouched product, smell of non-fish animal meat and smell of powdered milk, and wherein the [orally ingestible product] material is selected from the group consisting of grated horseradish, Kimchi, grated Japanese radish, vinegar, pickled Ume, lemon juice, soya milk, foods containing soybean protein, vegetable juice, tomato juice, grated garlic, old rice, konjak jelly, foods containing vitamin B group, retort-pouched foods, mutton and foods containing powdered skim milk.

13. (Twice amended) A method for masking at least one of an odor and a flavor other than a bitter flavor, of a material lacking a bitter flavor and having said at least one of an odor and a flavor other than a bitter flavor, in an orally ingestible product, comprising adding a nontoxic salt of gluconic acid to said product, wherein the flavor is selected from the group consisting of astringency, pungency, sourness and flavor of powdered milk, and wherein the odor is selected from the group consisting of soybean smell, vegetable smell,

smell of garlic, smell of old rice, smell of konjak jelly, smell of vitamin, smell of retort-pouched product, smell of non-fish animal meat and smell of powdered milk, and wherein the [orally ingestible product] material is selected from the group consisting of grated horseradish, Kimchi, grated Japanese radish, vinegar, pickled Ume, lemon juice, soya milk, foods containing soybean protein, vegetable juice, tomato juice, grated garlic, old rice, konjak jelly, foods containing vitamin B group, retort-pouched foods, mutton and foods containing powdered skim milk.

17-33. (New).--